Supreme Court, U. S.
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In The

Supreme Court of the United States

—o—

OCTOBER TERM, 1978

No. 78-227

—o—

LARRY GATES,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

—o—

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

—o—

BRIEF FOR RESPONDENT IN OPPOSITION

—o—

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OPINION BELOW

The opinion of the Court of Appeals of Iowa is not as yet officially reported, but is appended to the Petition for a Writ of Certiorari. The opinion was filed on March 29, 1978. The Order of the Supreme Court of Iowa denying rehearing is unreported and is appended to the Petition.

—o—

JURISDICTIONAL STATEMENT

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

I. Whether police officers were justified in making an investigatory stop of Petitioner's vehicle relying solely on information received from a citizen (known to both police officers) that Petitioner's vehicle was being driven in an erratic manner suggesting the possibility that the driver was intoxicated?

II. Whether Petitioner knowingly and voluntarily consented to a search of his vehicle without a warrant when the police officer stated that he did not have a search warrant but that he could get one?

III. Whether the police officers were justified in searching Petitioner's automobile without a warrant?

STATEMENT OF THE CASE

The Statement of the Case is adequately set forth in the Petition.

ARGUMENT

I.

This Court has held in *Adams v. Williams,* 407 U. S. 143 (1972), that police officers may make an investigatory stop based solely on information supplied by another person carrying sufficient indicia of reliability. The holding in *Adams, supra,* is dispositive of the question herein presented.

The pertinent facts were succinctly stated in the Iowa Court of Appeals decision, *State v. Gates,* filed March 29, 1978, at App. 14:

"(1) The Gates vehicle was first seen by Rogers on a highway directly in front of a cocktail lounge.

"(2) The vehicle was a blue and white Chevrolet Monte Carlo with out-of-state license plates, which appeared to be either Pennsylvania or New York plates.

"(3) The car was seen in a small Iowa city during the late evening or early morning hours, with the stop being made at approximately 1:30 a.m.

"(4) The vehicle was seen on a diagonal road near an amusement park traveling on the left side of the traveled portion of the roadway for some distance.

"(5) Rogers, who had been a part-time deputy and was known to law enforcement officers in the area, radioed Kilts and informed him to be on the lookout for a blue and white Chevrolet Monte Carlo which was, in his opinion, driving erratically over the road and that possibly the driver was drunk. Rogers gave the location of the car, the direction it was headed, and indicated that he believed there were three other passengers in the vehicle. The substance of this radio communication was substantiated by both Kilts and Loebach.

"(6) Loebach stated that the vehicle he and Kilts stopped was a white and blue Chevrolet Monte Carlo with Pennsylvania license plates and that three passengers were riding therein.

"(7) Rogers passed by the intersection where the two vehicles were stopped and radioed Kilts that that was the vehicle he had described to officers earlier."

Under this set of facts, the Iowa Court of Appeals concluded that the officers were justified in believing that criminal activity was in progress and that an investigatory stop was reasonable (App. 15). The Supreme Court of Iowa denied Petitioner's request for rehearing without opinion, on May 12, 1978 (App. 19).

Petitioner alleges that the decision reached by the Iowa Court of Appeals is in conflict with past decisions of this Court, citing only *Terry v. Ohio*, 392 U. S. 1 (1968). Respondent contends that not only is such an allegation unfounded, but is negated by this Court's decision in *Adams v. Williams*, 407 U. S. 143 (1972), which is controlling in the instant appeal.

Under the facts presented in *Adams, supra*, a police officer was on patrol at about 2:15 a.m. in a high crime area. A person known to the officer approached his patrol car and informed him that an individual seated in a nearby vehicle was carrying narcotics and had a gun at his waist. The officer approached the vehicle to investigate the informant's report. The officer tapped on the window and requested the occupant to open the door. The occupant rolled the window down instead, at which time the officer reached into the car and removed a fully loaded revolver from the occupant's waistband. This Court held that the officer was justified in making an investigatory

stop based solely on the information received from the informant. *Adams v. Williams, supra,* at 146-147.

"In reaching this conclusion, we reject respondent's argument that reasonable cause for a stop and frisk can only be based on the officer's personal observation, rather than on information supplied by another person." *Adams, supra,* at 147.

While this Court noted that the informant's unverified tip may have been insufficient for a narcotics arrest or search warrant under previous decisions, the informant carried enough indicia of reliability to justify the officer's brief and investigatory stop. *Adams, supra,* at 147. Among the indices of reliability was the fact that the informant was known to the officer, had supplied the officer with information in the past, that the informant came forward personally to give information that was immediately verifiable at the scene, and under state law, might have been subject to arrest for making a false complaint. *Adams, supra,* at 146-147.

In the instant case, the informant was a person known to the officers. The informant was in fact a part-time deputy. The informant relayed to the officers his observation of a vehicle being driven in an erratic manner and his belief that possibly the driver was drunk. The informant gave a precise description of the vehicle, its location, the direction it was headed, and the number of passengers in the vehicle. Although the officers did not observe the automobile in motion, all other information supplied by the informant was verified preceding the investigatory stop. The informant even drove past the intersection where the two vehicles were stopped and radioed the officers that that was the vehicle he had

described to officers earlier. It must also be noted that under existing Iowa law, the informant also was subject to immediate arrest for making a false complaint to a police officer. Supp., The Code, 1977, Criminal Law and Criminal Procedure (Iowa Criminal Code), Section 718.6.

The indices of reliability shown in the instant case favorably compare with the indices of reliability found in *Adams, supra,* and are thereby sufficient to justify an investigatory stop. Petitioner's allegation that such an investigatory stop was unjustified is unsupportable in the face of this Court's decision in *Adams v. Williams, supra.*

Not only was the investigatory stop justified, it was the officer's duty to stop Petitioner on the information they held.

> "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to simply shrug his shoulders and allow a crime to occur or a criminal to escape."
>
> *Adams v. Williams, supra,* at 145.

The report of an automobile being driven in an erratic manner suggesting an intoxicated driver and reported by a citizen known to the officers, demands the brief investigatory stop as part of the "essence of good police work." *Adams, supra,* at 145.

II.

The police officers, upon making the investigatory stop and observing an open can of beer sitting on the floorboard of the front passenger side, instructed the occupants to get out of the car. One of the officers asked

Petitioner if the car belonged to him and, if so, whether Petitioner would consent to a search of the vehicle. Petitioner in turn responded that the vehicle was his but asked the officer if he had a search warrant. The officer told Petitioner that he did not have one, but that he could go and get one. Petitioner then agreed to the search.

Petitioner alleges in his Petition that his consent to the search was not voluntarily or knowingly given on the grounds that the Petitioner acquiesced to consent because of a lawful claim of authority to search expressed by the officer. In support of this allegation, Petitioner cites *Bumper v. North Carolina,* 391 U. S. 453 (1968).

The Iowa Court of Appeals declined to consider this issue holding that the warrantless search of Petitioner's car was justified as one made incident to a lawful arrest, and as one made in the presence of exigent circumstances and probable cause to search for contraband (App. 16).

Regardless, Petitioner's allegation is without merit. It is not disputed that police officers may conduct a warrantless search of an automobile or house where its occupant voluntarily and knowingly consents to such a search. *Schneckloth v. Bustamonte,* 412 U. S. 218 (1973).

Petitioner did consent to the search of his car. There is no evidence Petitioner's consent was equivocal or coerced. That Petitioner was aware of his rights is evident from his question of the officers as to whether they had a search warrant. *See, United States v. Curiale,* 414 F. 2d 744 (2nd Cir. 1969).

There is nothing coercive about the officers' reply that they could get one. Petitioner could have continued to deny the officers permission to search, but he chose not to do that. He consented to the search. Petitioner was not handcuffed when he consented. His consent was not obtained at gun point or by threats if he refused consent.

Courts which have considered whether an officer's statement that he would get a warrant if consent to search was denied have uniformly held that such a statement is not, by itself, sufficient to vitiate a subsequent consent. *Barlow v. State,* 280 A. 2d 703 (Del. Super. 1971); *Beaupre v. State,* 526 S. W. 2d 811, 815 (Tex. Crim. App. 1975); *Commonwealth v. Woods,* 368 A. 2d 304 (Pa. 1976); *Mack v. State,* 298 So. 2d 509 (Fla. 1974); *People v. McLure,* 39 Cal. App. 3d 64, 113 Cal. Rptr. 815 (1974); *State v. Douglas,* 260 Ore. 60, 488 P. 2d 1366 (1971); *State v. Hirsch,* 518 P. 2d 649 (Ore. 1974); *State v. Rathburn,* 195 Neb. 485, 239 N. W. 2d 253 (1976); *State v. Suchy,* 277 N. E. 2d 459 (Ohio 1971); *Stephanson v. State,* 494 S. W. 2d 900 (Tex. 1973); *United States v. Agosto,* 502 F. 2d 612 (9th Cir. 1974); *United States v. Culp,* 472 F. 2d 459 (8th Cir. 1973); *United States v. Curiale,* 414 F. 2d 744 (2nd Cir. 1969); *United States v. Miller,* 442 F. Supp. 742 (D. Maine 1977); *Whitman v. State,* 25 Md. App. 428, 336 A. 2d 514 (1975). *But see, Poe v. Oklahoma City,* 483 P. 2d 1190 (Okla. Crim. App. 1971); *State v. Lewis,* 80 N. M. 274, 454 P. 2d 360 (1969). Even those jurisdictions which held otherwise, subsequent decisions have found valid consents even when officers note that a search warrant may be obtained, explaining that each case must be decided on its own facts. *Bell v.*

State, 512 P. 2d 226, 231 (Okla. Crim. App. 1973); *State v. Carlton,* 83 N. M. 644, 495 P. 2d 1091, 1097 (1972). From the facts presented herein, it is evident that Petitioner voluntarily and knowingly consented to the warrantless search of his vehicle.

Petitioner also alleges that even if he consented to the search of the automobile, the officers exceeded the scope of the consent by searching the automobile's trunk, thus, requiring any evidence seized as a result of the alleged consent to be suppressed. Respondent contends that the scope of a warrantless search of an automobile, where consent is obtained to search the vehicle, is not exceeded merely because the officer searches the trunk of such vehicle. The Fifth Circuit has held that the warrantless search of an automobile trunk pursuant to consent of its owner to search the vehicle is justified, especially where the owner makes no objection to the scope of the officer's search. *United States v. Villarreal,* 565 F. 2d 932, 937 (5th Cir. 1978). *See also, Shue v. State,* 129 Ga. App. 757, 201 S. E. 2d 174 (1973). Petitioner's complaint is without merit.

III.

Regardless of the issue of consent, the search of Petitioner's car was valid for three reasons.

First, the officers' observations of the open can of beer and the occupant's attempt to hide a pipe gave the two officers probable cause to believe there was contraband in the car. This probable cause made the search of Petitioner's car reasonable and valid. *Chambers v. Maroney,* 399 U. S. 42 (1970); *State v. Baych,* 169 N. W. 2d 578 (Iowa 1969). Where there is probable cause for

believing that the automobile which he stops and seizes has illegal contraband, he may search for it. *Carroll v. United States,* 267 U. S. 132 (1925). Petitioner's reliance on *United States v. Chadwick,* — U. S. —, 97 S. Ct. 2476, 53 L. Ed. 2d 538, is misplaced. In *Chadwick, supra,* a locked footlocker was transported by federal narcotics agents to the federal building in Boston, after the footlocker had been seized by federal agents from the open trunk of a parked automobile during the arrest of those who were in possession of the footlocker. Federal narcotic agents subsequently searched the footlocker without a search warrant and without the consent of the arrested persons. This Court held that such a search violated the Fourth Amendment, the search being unreasonable without the safeguards a judicial warrant provides. *Chadwick, supra,* — U. S. —, 97 S. Ct. 2476, 2485, 53 L. Ed. 2d 551. However, this Court noted that the initial detention of the footlocker from the trunk was valid as a sufficient guard against any risk that evidence might be lost. *Chadwick, supra,* at — U. S. —, 97 S. Ct. 2485, 53 L. Ed. 2d 550. In the instant case, the initial search of Petitioner's automobile was justifiable and served to place a sufficient guard against any risk that evidence might be lost.

Secondly, the search of Petitioner's car was incident to the arrest of Petitioner and therefore constituted a valid search. *State v. Farrell,* 242 N. W. 2d 327, 330 (Iowa 1967).

Lastly, as the Iowa Court of Appeals so held, the search was also justified as one made in the presence of exigent circumstances (App. 16). The cars mobility and possible destruction of evidence a likely circumstance

demanded an immediate search. *Carroll v. United States, supra.*

The warrantless search of Petitioner's automobile was justified and Petitioner's complaints are without merit.

CONCLUSION

The Iowa Court of Appeals did not err in holding that the officer's made a proper and dutiful investigatory stop of Petitioner's vehicle, and had sufficient justification upon probable cause to conduct a warrantless search of Petitioner's vehicle. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ray Sullins, Special Assistant Attorney General for the State of Iowa, hereby certify that on the 13th day of September, 1978, I mailed three (3) copies of Brief for Respondent in opposition, correct 1st class postage prepaid to:

Arthur L. Buzzell

Newport, Buzzell, Liebbe & Fortini
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Davenport, Iowa 52801

I further certify that all parties required to be served have been served.

RAY SULLINS
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